REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 23, 29, 30 and 31 are amended and claims 3, 5, 11, 12 and 14-20 had been cancelled without prejudice or disclaimer. Claim 13 is cancelled herein without prejudice or disclaimer. No new matter is added to the application. Accordingly, by the present Response, claims 1, 2, 4, 6-10 and 21-39 are pending in the application. Re-examination and reconsideration of the application, as amended, are requested.

Claims 23, 29 and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In particular, the Examiner stated that those claims are rejected as "software per se."

In response, claims 23, 29 and 30 are amended herein to further clarify structural features of the claimed data management system. For example, claim 23 is amended to recite that the claimed "data management system" comprises a processor configured to respond to a data request and for selecting data in the manner recited in the claim. Claims 29 and 30 are amended in a consistent manner. It is submitted that the claims, as amended recite structural features of the claimed data management system in a manner that is not software per se. The rejection of claims 23, 29 and 30 is, therefore, respectfully traversed.

Claim 13 was objected to as being dependent upon a rejected base claim. Applicant notes with appreciation, the Examiner's indication that claim 13 would be allowable, if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response, base claim 1 is amended herein to include the subject matter of dependent claim 13. Claim 13 is cancelled without prejudice or disclaimer, to avoid redundancy with claim 1. It is noted that there were no intervening claims in the dependency relationship between dependent claim 10 and base claim 1. Accordingly, as amended, claim 1 is equivalent to an independent version of allowable claim 13. Because claim 13 was allowable, if rewritten in independent form, it is submitted that claim 1 is now allowable in the same manner.

Claims 1, 2, 4, 6, 7, 21-29 and 31-38 have been rejected under 35 U.S.C. 102(e) as being anticipated by Koopersmith et al. (U.S. Patent Appl. Publ. No. 2001/0042002). This rejection is respectfully traversed.

As noted above, claim 1 is amended herein to include the subject matter of allowable claim 10. Accordingly, as amended, claim 1 is in condition for allowance, at least for reasons as discussed above. Claims 2, 4, 6, 21 and 22 are dependent (directly or indirectly) on claim 1 and, thus, are in condition for allowance at least for reasons as discussed above with respect to claim 1, as well as for additional reasons apparent from the language of those dependent claims.

Claim 23, as amended herein, is patentably distinguished from Koopersmith et al. As amended, claim 23 recites a data management system on a communication network for confirming a user's request for transmission of data before providing requested data to the user, where the data management system comprises:

> "a processor configured to respond to a data request received on the communication network by (a) communicating a request for confirmation to a user associated with the request, the request for confirmation being unrelated to a price associated with requested data, (b) determining if the user confirms or does not confirm the data request and (c) providing a notice to direct data to the user in the event of a determination that the user confirmed the data request, where such data is not directed to the user in the event of a determination that the user has not confirmed the data request; and
> the processor further configured for selecting data to provide to the user on the communication network in response to receipt of the notice from the anti-fraud unit to direct data to the user." (Underlines added for emphasis.)

The Koopersmith reference does not disclose or suggest a data management system as recited in claim 23, including a processor configured to respond to a data request received on a communication network by communicating a request for confirmation to a user associated with the request, the request for confirmation being unrelated to a price associated with requested data. Instead, Koopersmith describes a "method by which a search request from one of the consumers 107 is fulfilled ..." with reference to the block diagram of Fig. 6 and paragraph 0092 et seq. In that method, Koopersmith states that "Step 1" involves a consumer 107.1 using a consumer device 105.1 to issue an information request 652 to the server 112, requesting information regarding a desired item, e.g., two slice toaster ovens. (See Koopersmith at

-9-

paragraph [0092], lines 4-7.) Koopersmith fails to describe any communication of a confirmation message to the consumer before the requested information is sent.

Rather, Koopersmith proceeds to describe "Step 2A and 2B" in which the server 112 operates to search datamart 525 and other servers for matches to the search request. Then, in Koopersmith's "Step 3," the server 112 filters the information, and in "Step 4," the server 112 "sends a message 670 to the consumer 107.1 containing a focused and tailored response to the information request 652. (Koopersmith, paragraph [0093], lines 1-6 and paragraph [0095], lines 1-3.) Koopersmith does not describe or suggest any communication of a confirmation message to the consumer, between "Step 1" (in which the consumer submits a request for information to the server 112) and "Step 4" (in which the server 112 sends the consumer focused information responsive to the request).

The Examiner cites Koopersmith's paragraph [0118] and the statement "Once trusted entity server 112 identifies the information in advertising materials 1183 that is relevant to the request or interest of consumer 107.1, trusted entity server 112 then transmits the relevant materials to consumer 107.1. In this way, advertising materials 1183 are sent to those consumers who have expressed an interest in the product that is the subject matter of the particular advertising material 1183." The Examiner further states that "trusted entity server 112 will not send the particular advertising material 1183 to consumers 107.2-107.n that either did not request information about, or otherwise express interest in, the product that is the subject of the particular advertising materials 1183."

However, there is no request (sent to the user) for confirmation involved in Koopersmith's act of sending advertising materials. Instead, Koopersmith simply sends advertisement materials about a product to users/consumers that requested information (or expressed an interest) in the product, but does not send such materials to users/consumers who did not request (or express interest) in the product. Koopersmith's act of sending advertisement materials is not a request for confirmation. In contrast, claim 23 recites "communicating a request for confirmation to a user associated with the request, the request for confirmation being unrelated to a price associated with requested data."

Claim 23 further recites "determining if the user confirms or does not confirm the data request." In contrast, Koopersmith also does not describe any mechanism that requires or even looks for (monitors) a consumer's response to such advertising materials. Accordingly, the advertising materials in Koopersmith's paragraphs [0116] and [0118] do not <u>request a confirmation</u> from the user and do not provide a mechanism for the user to confirm the user's request. Instead, Koopersmith's system simply determines and sends advertisements that relate to a product that the user requested.

Furthermore, while Koopersmith sends advertising materials to the user who requested a product (or who expressed an interest in a product), Koopersmith does not <u>determine if the user confirms or does not confirm</u> the initial request for the product. It appears that the Examiner has argued that Koopersmith's act of sending advertisement materials relevant to the product of interest is equivalent to sending a request for confirmation. However, Koopersmith does not disclose or suggest any mechanism for determining if a user confirmed a request for a product. Koopersmith's act of <u>sending to</u> a user an advertisement relating to a requested product does <u>not</u> involve <u>receiving confirmation from</u> the user (much less a <u>determination of whether or not the user confirmed</u> the initial request for the product).

With regard to "determining if the user confirms or does not confirm the data request," the Examiner argues that Koopersmith describes a "confirmation notice" in paragraph [0112] and [0116]. However, those paragraphs of Koopersmith relate to a process in which the server 112 sends a user/consumer bids (e.g., the best of bids 925.1-925.n) received for the product that the user/consumer desires to purchase. In addition, the user/consumer is allowed to respond to bids. However, because bids necessarily relate to the price of the product (i.e., they are bids on prices from which the user may select), the bids are not <u>requests for confirmation unrelated to a price associated with requested data</u>. To the contrary, price bids must relate to the price of the product. Accordingly, a determination of whether or not a user accepted a bid is <u>not</u> a determination of whether or not a user confirmed a request for confirmation that was unrelated to the price of the requested product. Instead, an acceptance or non-acceptance of a bid is a response to a request that is directly related to the price of the product.

Accordingly, it is submitted that claim 23, as amended, is patentably distinguished from Koopersmith et al. Similar comments apply to claim 31 (which is amended in a manner that corresponds to the amendments to claim 23 and the above comments). The rejection of claims 23 and 31 is, therefore, respectfully traversed.

Furthermore, the "confirmation notice 1029" mentioned in Koopersmith's paragraph [0116] is a notice that is sent by a product supplier to indicate that a deal has been reached. That confirmation notice is not sent by a user that requested transmission of data. Instead, that notice is sent by the product supplier, after the user accepts a bid. Thus, the "confirmation notice 1029" in Koopersmith's paragraph [0116] does not teach or suggest "determining if the user confirms or does not confirm the data request" (where the user is the user that requests the data). Accordingly, it is submitted that claims 23 and 31 are further patentably distinguished from Koopersmith et al.

Claims 24-29 are dependent, directly or indirectly on claim 23 and are, therefore, in condition for allowance at least for reasons as discussed above with respect to parent claim 23, as well as additional reasons apparent from the language of those dependent claims. Claims 32-38 are dependent, directly or indirectly on claim 31 and are, therefore, in condition for allowance at least for reasons as discussed above with respect to parent claim 31, as well as additional reasons apparent from the language of those dependent claims.

Claims 9, 10, 30 and 39 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Koopersmith et al. (U.S. Patent Appl. Publ. No. 2001/0042002) in view of Parekh et al. This rejection is respectfully traversed.

Each of claims 9 and 10 is dependent, directly or indirectly on claim 1 and is, therefore, in condition for allowance at least for reasons as discussed above with respect to parent claim 1, as well as additional reasons apparent from the language of those dependent claims.

Claim 30 is dependent on claim 23 and are, therefore, in condition for allowance at least for reasons as discussed above with respect to parent claim 23, as well as additional reasons apparent from the language of those dependent claims.

Claim 39 is dependent, directly or indirectly on claim 31 and are, therefore, in condition for allowance at least for reasons as discussed above with respect to parent claim 31, as well as additional reasons apparent from the language of those dependent claims.

The Parekh et al. reference does not address the above-noted distinctions between the parent claims 1, 23 and 31 and the cited Koopersmith reference. Accordingly, the rejection of claims 9, 10, 30 and 39 is respectfully traversed.
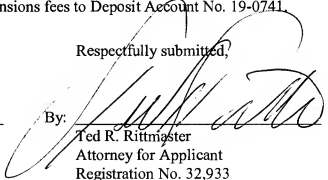
In view of the foregoing Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: _____ February 23, 2010 _____ By: _____
FOLEY & LARDNER LLP   Ted R. Rittmaster
Customer Number: 23392   Attorney for Applicant
Telephone: (213) 972-4500   Registration No. 32,933
Facsimile: (213) 486-0065

-13-